

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF TEXAS

DALLAS DIVISION

Civil Action No. 3-06cv2322-N

BLANCA VALENZUELA, MARGIE SALAZAR, JOSE A. SERRATO,
JOSIE RENDON, CLARA TOVAR, CONSUELO ESPINO, MARIA
AVILA, ERNESTINA NAVARRETTE, MARIA E. MUNOZ, AMANDA
SALCIDO, CANDELARIO G. ORTEGA, MARIA ORTIZ, JOSE
OLIVA, RAFAELA CHAVEZ, ELODIA ARROYO, SUSANA CARDIEL,
GRACIE RIOS and LEONEL RUIZ, individually and on
behalf of all others similarly situated,
Plaintiffs,

v.

SWIFT BEEF COMPANY, INC., d/b/a SWIFT COMPANY, SWIFT &
COMPANY, HICKS, MUSE, TATE & FURST, INC., HM CAPITAL
PARTNERS OF DALLAS, LLC, and JOHN DOES I-V,
Defendants.

DEPOSITION OF: ERIC A. RAY - April 9, 2008

PURSUANT TO NOTICE, the deposition of
ERIC A. RAY was taken on behalf of the Plaintiffs at
1770 Promontory Circle, Greeley, Colorado 80634, on
April 9, 2008, at 2:00 p.m., before Sharon L. Szotak,
Registered Professional Reporter, Certified Realtime
Reporter, and Notary Public within Colorado.

A P P E A R A N C E S

For the Plaintiffs: ERIC D. PEARSON, ESQ.
Heygood, Orr, Reyes &
Bartolomei
2331 West Northwest Highway
Second Floor
Dallas, Texas 75220

For the Defendants: ROBERT E. YOULE, ESQ.
Sherman & Howard LLC
633 17th Street, Suite 3000
Denver, Colorado 80202

I N D E X

EXAMINATION OF ERIC A. RAY: PAGE
April 9, 2008

By Mr. Pearson 4

INITIAL
DEPOSITION EXHIBITS: (Previously marked) REFERENCE

Form dated 8/18/06 for Claudia Lima Cruz, 15
with attachments
11 Letter to Cangemi from Shandley, 7/5/06, 13
with attachments

1 WHEREUPON, the following proceedings
2 were taken pursuant to the Federal Rules of Civil
3 Procedure.

4 * * * * *

5 ERIC A. RAY,
6 having been first duly sworn to state the whole truth,
7 testified as follows:

8 EXAMINATION

9 BY MR. PEARSON:

10 Q. Mr. Ray, would you state your full name
11 for the record, please.

12 A. My name is Eric Allen Ray.

13 Q. And where do you currently work, Mr. Ray?

14 A. JBS Swift Company at the Greeley beef
15 plant and lamb plant.

16 Q. What is your position?

17 A. Director of human resources.

18 Q. For both of those plants?

19 A. Yes.

20 Q. How long have you had that position?

21 A. Since July.

22 Q. July of 2007?

23 A. Yes.

24 Q. What was your position prior to that?

25 A. I was the director of human resources in

1 our Cactus facility.

2 Q. How long were you in that position?

3 A. Approximately a year and a half.

4 Q. Where had you been prior to that?

5 A. I worked at our Louisville, Kentucky,
6 facility. It's a pork plant.

7 Q. In what capacity?

8 A. As HR manager.

9 Q. Is that a different position than HR
10 director?

11 A. Yes.

12 Q. Is that one level below that, or --

13 A. Yes.

14 Q. Would you report to the HR director?

15 A. Yes.

16 Q. And for how long had you been in that
17 position?

18 A. I was in that position approximately two
19 years.

20 Q. And what about prior to your time in
21 Louisville, where were you?

22 A. I worked for a staffing agency in
23 Cookeville, Tennessee.

24 Q. So your first position with Swift was at
25 the Louisville pork facility?

1 A. Yes.

2 Q. Why did you leave Cactus to go to Greeley
3 in 2007?

4 A. The opportunity to come to Greeley.

5 Q. And leave Cactus? Who had had your
6 position in Greeley prior you taking the job?

7 A. Dwayne Newkirk.

8 Q. Do you know why he left?

9 A. No.

10 Q. Who took your position in Cactus?

11 A. Michael Herrera.

12 Q. What were your duties as director of human
13 resources in Cactus?

14 A. It was anything related to human
15 resources.

16 Q. So that would include hiring?

17 A. Yes.

18 Q. Okay. And you also worked on compliance
19 issues relating to immigration laws?

20 A. Yes.

21 Q. And is that the same with your current
22 position in Greeley?

23 A. Yes.

24 Q. Did you have -- have you had any input in
25 the development of any policies or procedures at Swift

1 for reviewing the paperwork of job applicants to its
2 processing facilities?

3 MR. YOULE: Could you break that down?

4 You have two different questions. First was input into
5 policies and the second one was -- I thought it was if
6 he actually engaged in the activity.

7 MR. PEARSON: Okay. I'll try to make a
8 better question.

9 Q. (BY MR. PEARSON) There's been some prior
10 testimony of some evolution in the procedures that
11 Swift used for hiring with respect to trying to ferret
12 out illegal aliens. Are you familiar with those types
13 of changes to the policies and procedures?

14 A. Yes.

15 Q. As an HR director at Cactus and then at
16 Greeley, did you have any firsthand involvement in
17 implementing those changes?

18 A. Those changes were presented to us.

19 Q. And then you just carried them out?

20 A. Yes.

21 Q. But did you have any input on what the
22 changes were going to be before they were made, or you
23 just were told, here's the new policies and procedures
24 and to carry them out?

25 A. We were told that that's what the policies

1 were.

2 Q. When you were the director of human
3 resources in Cactus, tell me what, if anything, Swift
4 did to prevent illegal immigrants from being hired in
5 its Cactus facility.

6 A. We followed the procedures set forth in
7 the employers handbook for completing an I-9. Followed
8 the I-9 in a nutshell. Used -- I don't remember what
9 it was called then, if it was E-Verify or Basic Pilot,
10 but whichever, you know, of those phrases it was called
11 then. We did those things.

12 Q. And were the policies and procedures that
13 were employed at the Cactus facility to try to prevent
14 Swift from hiring illegal aliens, were those policies
15 and procedures that were dictated by Swift corporate?

16 A. Yes.

17 Q. And is that still true today at Greeley?

18 A. Yes.

19 Q. Was it -- from your experience going from
20 Cactus to Greeley, were there any differences in the
21 way Swift went about trying to prevent illegal
22 immigrants from being hired at the two facilities?

23 A. No.

24 Q. It was pretty uniform between the
25 different facilities, from what you saw?

1 A. Yes.

2 Q. And when you were the director of human
3 resources in Cactus, what, if anything, did Swift do to
4 prevent people who had committed identity theft from
5 being hired at that facility?

6 A. It was the things that we just talked
7 about.

8 Q. And was it your understanding that most
9 people who committed identity theft who were applying
10 to Swift facilities were illegal immigrants?

11 MR. YOULE: Objection to form for lack of
12 foundation. You can answer if you can.

13 A. I don't really understand the question.

14 Q. When you were the director of human
15 resources at Cactus, did you equate identity theft with
16 someone being an illegal immigrant?

17 A. Not necessarily.

18 Q. Was it your experience that the vast
19 majority of people who either you knew had committed
20 identity theft or you suspected had committed identity
21 theft were illegal aliens?

22 MR. YOULE: Objection to form for lack of
23 foundation. You can answer if you can.

24 A. Again, I don't know.

25 Q. Well, from your experience as director of

1 human resources, could you -- did you ever see an
2 occasion on which someone who you did not think was an
3 illegal immigrant was committing identity theft for
4 some reason other than because they were not legally
5 entitled to work in this country?

6 A. Yes.

7 Q. Give me -- tell me about that, or give me
8 some examples of that.

9 A. I don't remember anything exact, but there
10 was an individual who was using his -- well, he was
11 using his father's identity, because he had worked for
12 us previously and his father had not. And he had a
13 poor work history, and his father obviously would not
14 have had one. I couldn't remember the name.

15 Q. Was that an isolated incident that you
16 remember?

17 A. There may have been a couple other similar
18 to that, but I don't remember.

19 Q. When you were the director of human
20 resources at Cactus, were you ever involved in
21 terminating an employee who was suspected of identity
22 theft?

23 A. Yes.

24 Q. And on those instances in which you
25 terminated an employee who was suspected of identity

1 theft, why were you terminating them?

2 A. More times than not, they would tell us
3 that they weren't who they said they were.

4 Q. And why would that be a basis for
5 termination?

6 A. Because they had falsified the information
7 that they provided to us and weren't eligible to work
8 in the United States.

9 Q. How did you know that because they
10 falsified the information, that they were not eligible
11 to work in the United States?

12 A. Because they would tell us.

13 Q. I mean, give me -- just sort of paraphrase
14 what kind of things they would say. What would be a
15 typical statement?

16 A. Well, they'd tell us that they bought
17 their papers from somebody else, or that they didn't
18 have good papers so they were using these, that they
19 weren't legal to work.

20 Q. And in those instances, the termination by
21 Swift was not because of the use of improper documents;
22 it was because that person wasn't legally entitled to
23 work in the United States?

24 MR. YOULE: Objection to form.

25 Q. Is that correct?

1 A. Could you ask that again?

2 Q. Sure. When someone was terminated because
3 they, for example, admitted that they had been using
4 false papers, the reason they were terminated was
5 because they were not entitled to legally work in the
6 United States; is that right?

7 MR. YOULE: Same objection.

8 A. I guess I don't understand what you're
9 saying. I mean, they told us that they were
10 unauthorized to work.

11 Q. And is that why they were terminated?

12 A. Yes.

13 Q. Because other employees under other
14 circumstances could admit to using false papers in the
15 past, and they could still be retained by Swift if they
16 had obtained the right to work legally in the United
17 States; is that right?

18 A. I don't know of any of those situations
19 happening.

20 Q. What -- when you were director of human
21 resources at Cactus, what was the self-reporting policy
22 of Swift about employees who self-reported that they
23 had used false papers in the past?

24 A. I'm unaware that that situation ever
25 occurred --

1 Q. Okay.

2 A. -- when I was there.

3 Q. Has that occurred at Greeley?

4 A. Not since I've been here, no.

5 Q. Are you -- as director of human resources
6 at Cactus and then at Greeley, are you aware of what
7 the official policy is on someone who self-reports that
8 they have been working at your plant for some period of
9 time under a false identity, but now they've obtained
10 the right to work legally in the United States and they
11 want to continue to work for your company?

12 A. I'm not aware specifically -- I mean, I
13 don't have it on the tip of my tongue. It's not
14 something that typically occurs.

15 Q. Well, it's not something that you're aware
16 of is what you're saying.

17 A. No.

18 Q. Let me show you some documents that are in
19 that notebook in front of you.

20 A. Okay.

21 Q. Looking at Exhibit 11, and turning to
22 the -- I guess the fourth page. The number in the
23 bottom right-hand corner would be 8188. Do you see
24 that?

25 A. Okay.

1 Q. Have you ever seen that before?

2 A. Yes.

3 Q. And what is this document?

4 A. This is our employment eligibility and
5 identity verification policy.

6 Q. And if you'd turn to the bottom of page
7 8194, do you see at the bottom of the page it says,
8 "Note: Self-reporting protocol"?

9 A. Okay.

10 Q. And it says, "In the event that an
11 employee voluntarily reports that he or she is employed
12 by Swift under a false name and/or Social Security
13 number, paren, or otherwise has engaged in identity
14 fraud, paren, the employee's employment may be
15 continued only upon the approval of the vice president,
16 human resources field ops and labor relations or the
17 senior vice president of human resources provided that
18 the employee must reapply for employment, successfully
19 complete the employment application process, and
20 complete the EEIVP, which includes the processing of a
21 new I-9." Did I read that correctly?

22 A. Yes.

23 Q. Were you aware of that protocol prior to
24 today?

25 A. I knew we had a protocol. I mean, I don't

1 know what the -- that's something we don't run across.

2 Q. So, for example, if we look back at
3 Exhibit 7 -- well, let me ask you another question. So
4 you knew there was a protocol, but you didn't know
5 specifically what it was?

6 A. I would have had to look at it.

7 Q. Okay. For example, if you'd turn to the
8 page number 3883 at the bottom right-hand corner. I
9 think it's the fourth page in. You're in the right
10 exhibit. It's the sixth page in. There you go.

11 For example, this employee, Lucas Garcia
12 Bernabe, a/k/a Augustin Gonzales Ramos, it says,
13 "Employee came to HR and stated that he has been
14 working under different documents but now has his real
15 documents." And the resolution was, "Verified
16 employment authorization card, dots connected." Do you
17 see that?

18 A. Yes.

19 Q. In your time as director of HR at Cactus
20 and Greeley, you never had a situation where someone
21 came forward and said they had been working under false
22 papers but now had the right papers?

23 A. I don't recall any of that.

24 Q. Would that type of person have come to you
25 or to someone else to self-report?

1 A. They would have come to me eventually.

2 Even if it had been through one of my other HR folks,
3 it would have come to me.

4 Q. And you don't recall that happening?

5 A. No.

6 Q. What is a tips form or tips sheet?

7 A. It's this sheet we're looking at.

8 Q. And when was that instituted at Swift?

9 MR. YOULE: Let's be clear. Are you
10 talking about this particular sheet or the entire tips
11 policy?

12 Q. I guess we'll start with the kind of tips
13 policy, whatever that may have been.

14 A. I have to look at the policy, but I
15 believe that -- I mean, my guess --

16 MR. YOULE: Don't guess.

17 A. I don't -- I don't know when it was. I
18 mean, I'd have to look.

19 Q. When you were director of human resources
20 at Cactus, were you aware of a problem with illegal
21 immigrants being employed at that facility?

22 A. No.

23 Q. Were you aware of there being a problem
24 with persons who had committed identity theft being
25 employed at that facility?

1 A. No.

2 Q. Did you ever become aware of such a
3 problem?

4 A. No.

5 Q. Were you at the Cactus plant when the ICE
6 raids occurred in December 2006?

7 A. Yes.

8 Q. What was your understanding as to what
9 those raids involved?

10 A. My understanding is, it was ICE agents
11 verifying eligibility for work for employees.

12 Q. And how many employees did you lose at
13 that Cactus plant as a result of those raids?

14 A. 200 and something.

15 Q. Out of how many total?

16 A. Almost 3,000.

17 Q. At that facility, there were almost
18 3,000?

19 A. I believe that's close.

20 Q. If the ICE -- I don't have an extra one
21 for an exhibit, but if ICE claimed they arrested 297
22 employees at the Cactus facility as part of their
23 raids in December 2006, would you disagree with that
24 number?

25 A. No. I never got an official number list

1 from ICE.

2 Q. And did Swift terminate the employment of
3 the people that had been arrested by ICE in the
4 December 2006 raids?

5 A. Yes.

6 Q. Why was that done?

7 A. Unresolved identity.

8 Q. Meaning what?

9 A. That their identity was unresolved.

10 Q. When were those employees terminated?

11 A. I believe -- it was shortly after the
12 event.

13 Q. Were all the people that were terminated
14 from the Cactus facility people that never returned to
15 work after the ICE raids, or had some of them returned
16 to the plant?

17 A. I think, in the days following, some folks
18 had returned to the plant.

19 Q. And those folks who had been detained by
20 ICE in the raids and then returned to the plant, how
21 did you deal with them as far as whether they could
22 continue to work there or not?

23 A. I believe -- well, there were some
24 individuals that we contacted the ICE agents and asked
25 are they authorized or not. And they would tell us yes.

1 or no.

2 Q. And were you involved in the efforts to
3 hire replacements for those workers who had been
4 terminated as a result of the ICE raids?

5 A. Yes.

6 Q. What was your specific role in that?

7 A. I was the lead at, you know, building that
8 facility back.

9 Q. What efforts did you undertake to rehire
10 workers for that facility?

11 A. Many. We recruited heavily in our local
12 area. We recruited kind of in outwardly going circles
13 further and further away from the facility.

14 Q. Were there some recruiting centers open
15 that were recruiting for all the different facilities?

16 A. Yes.

17 Q. Where were those located?

18 A. There was one in El Paso and one in
19 McAllen.

20 Q. And why were those areas chosen?

21 A. Well, when we first started the process of
22 rebuilding in Cactus, we looked at areas with high
23 unemployment, high population, areas with industrial or
24 agricultural work. And through that process, I think
25 we ended up in those locations.

1 Q. How long did it take you to get the
2 staffing levels back up to where they had been in
3 Cactus before the ICE raids?

4 A. I believe it was in May.

5 Q. Of 2007?

6 A. Yes.

7 Q. What role did you have in Swift's actions
8 in or around October 2006 in interviewing certain
9 employees who were suspected of possibly committing
10 identity theft?

11 A. Very little.

12 Q. Okay. There's been -- my understanding
13 from previous testimony is that Swift took certain
14 criteria that had been developed by a company called
15 Border Management Strategies and selected a group of
16 employees who -- for which there were certain
17 indicators that they might have committed identity
18 theft, and then pulled those people out to interview
19 them. Are you familiar with that process?

20 A. I'm familiar that there was a process.

21 Q. Were you involved in it at all?

22 A. My part of that process was making sure
23 that there were rooms available. I was not involved in
24 the interviewing. And then ensuring that the employees
25 that were requested got to the interviews.

1 Q. That was it?

2 A. Uh-huh.

3 MR. YOULE: You need to say yes.

4 A. Yes. I'm sorry.

5 Q. That's all right.

6 How many employees did you lose from the
7 Cactus facility as a result of that action?

8 A. I don't know.

9 Q. Was it five? Was it a hundred?

10 A. I don't know what the number was. It was
11 more than five.

12 Q. Other than what you were told by corporate
13 on any changes that occurred in 2006 about hiring or
14 trying to ferret out illegal aliens, did you do
15 anything on your own, as the director of human
16 resources at Cactus, to address those issues?

17 A. No. Followed the policies.

18 Q. The policies set by corporate?

19 A. Yes.

20 Q. Were you allowed to develop your own
21 policies for each plant, or were you supposed to follow
22 what came down from corporate?

23 A. I don't know that that ever came up.

24 Q. And have you developed any of your own
25 policies and procedures that you use in Greeley other

1 than what has been handed down from corporate?

2 A. No.

3 Q. Has the -- from your observations, did the
4 ethnic makeup of the workforce at Cactus change from
5 before the ICE raids to after?

6 A. Not significantly.

7 Q. Noticeably in any way?

8 A. Yes.

9 Q. In what respect?

10 A. I think, as we hired more and more people
11 that lived in Amarillo, it changed.

12 Q. It changed how? More whites? Your
13 African Americans? More what?

14 A. That's the thing. I don't know if it was.
15 It was -- we probably, at that point -- no. I don't
16 know that there was a change after the ICE raids.

17 Q. What were you getting at when you started
18 to talk about Amarillo?

19 A. I think there was a period of time in
20 which we saw a larger portion -- or a large -- larger
21 population of African -- east Africans that began
22 working for us. I don't remember when that was,
23 though.

24 Q. That was at Cactus?

25 A. Yes.

1 Q. East African being like --

2 A. Sudan.

3 Q. And you don't know whether that was before
4 or after the raids?

5 A. No. Because we began recruiting more
6 aggressively in Amarillo even before. It was the
7 summer before.

8 Q. And what was your understanding as to why
9 that was being done?

10 A. That facility has a very small local
11 population base. And for us to be able to have an
12 applicant flow sufficient, you have to go to larger
13 populations.

14 Q. But was there an effort from sort of March
15 of 2006 forward to start building up the staffing
16 levels at these plants in anticipation of the ICE
17 raids?

18 A. No.

19 MR. YOULE: Objection to form for lack of
20 foundation.

21 Q. Were you aware of that?

22 A. No.

23 Q. You were never told in 2006 to try to
24 overstaff or overhire at Cactus in anticipation of the
25 ICE raids?

1 A. No.

2 Q. Doug Schult never told you that that was
3 happening?

4 A. No.

5 Q. Did you increase your hiring or recruiting
6 efforts at any point in 2006 prior to the ICE raids?

7 A. Yes.

8 Q. When was that?

9 A. I don't recall. But it would have been
10 prior to our peak season.

11 Q. Were you told why that was being done?

12 A. It's peak season. The opportunity for the
13 facility to run more hours.

14 Q. Were you aware of the wage increases that
15 occurred in October of 2006?

16 A. There was a point where we increased the
17 starting pay, but it didn't really affect wages.

18 Q. Well, it affected the wages for the new
19 hires, right?

20 A. Yes.

21 Q. Do you know why that was done?

22 A. To maintain competitive and be
23 competitive.

24 Q. Competitive with who?

25 A. I would imagine with our competition.

1 Q. Were you aware that ICE -- when did you
2 become aware, when you were at Cactus, that ICE was
3 looking into or conducting some kind of investigation
4 regarding Swift processing facilities?

5 A. I guess I would have been first aware when
6 they subpoenaed our I-9s.

7 Q. Was that when they subpoenaed the I-9s at
8 Cactus or when they had done that through a different
9 plant?

10 A. In Cactus is when I would have first
11 thought that there was something going on there.

12 Q. And who was involved in pulling those I-9s
13 together?

14 A. The HR directors in each facility would be
15 in charge of theirs. For ours, it was our entire HR
16 staff.

17 Q. And did you send the originals or copies
18 to ICE?

19 A. We sent the originals.

20 Q. Did Cactus receive those back yet from
21 ICE?

22 A. I don't know.

23 Q. Has Greeley -- did Greeley receive theirs
24 back from ICE?

25 A. Yes.

1 Q. So is it your testimony that there was
2 nothing unusual about the step-up in hiring that
3 occurred in the fall of 2006 at Swift processing plants
4 prior to the ICE raids?

5 MR. YOULE: Objection to form for lack of
6 foundation. You can answer if you know.

7 A. I don't know -- I mean, I know that we
8 did. I don't know why.

9 Q. Nobody told you?

10 A. No. I don't remember that, no.

11 Q. At the time that you were at the Cactus
12 plant, were any of the employees -- strike that.

13 At the time you were at the Cactus plant,
14 were any of the management level employees ever
15 investigated for possibly being involved in hiring
16 illegal immigrants or helping them with false identity
17 documents?

18 A. Not that I remember.

19 Q. Did that ever happen in Greeley when you
20 were there?

21 A. No.

22 Q. What was the ethnic composition of the
23 workers at the Louisville facility compared to, let's
24 say, Cactus or Greeley?

25 MR. YOULE: Objection to form for lack of

1 foundation.

2 Q. From when you were there at Louisville to
3 when you were at Cactus and then Greeley?

4 MR. YOULE: Same objection. You can
5 answer if you know.

6 A. Louisville was a metropolitan city, very
7 diverse. You know, people from all races and
8 ethnicities at that facility.

9 Q. What about -- how does that compare to
10 Cactus or Greeley?

11 A. In Cactus and Greeley, there's more of a
12 Hispanic workforce.

13 Q. More so than at Louisville?

14 A. Yes.

15 Q. Were you aware at Cactus of a large number
16 of workers from Guatamala who worked there at the
17 facility?

18 A. No.

19 Q. Or any other country besides Mexico? Any
20 other foreign country?

21 A. No.

22 Q. Were there issues at Cactus when you were
23 there of workers speaking or writing some dialect of
24 Spanish or some other language other than English or
25 Spanish?

1 A. Yes.

2 Q. Tell me about that.

3 A. It was my understanding that there were
4 people who did not -- I don't speak Spanish -- who did
5 not speak the traditional Spanish. And there were
6 communication issues.

7 Q. And how did you deal with those?

8 A. I would find an employee who was able to
9 speak either English and that dialect or Spanish and
10 that dialect.

11 Q. Do you recall what any of the dialects
12 were?

13 A. No.

14 Q. What, if anything -- what benefits, if
15 any, has Swift provided to employees -- strike that.

16 Has Swift in the past provided some kind
17 of subsidy for transportation costs for job applicants
18 to their plants?

19 A. For job applicants?

20 Q. Yes.

21 A. Not that I'm aware of.

22 Q. What about for new hires?

23 A. Yes.

24 Q. And when did that occur? Or when has that
25 occurred?

1 A. I believe it would have been, like, April
2 of -- April of 2007.

3 Q. Were you still at Cactus then, or were you
4 at Greeley?

5 A. Cactus.

6 Q. And tell me what you know about that.

7 A. We had a large number of employees who
8 were living in Amarillo, because there was no housing
9 in Cactus. There had just been a tornado that came
10 through Cactus and destroyed this small town's housing.
11 So they were living in Amarillo. And to assist and
12 offset that cost, we provided buses for those folks
13 living in Amarillo.

14 Q. Buses to come to work each day?

15 A. Yes.

16 Q. And what about anything that was done to
17 subsidize or assist with housing?

18 A. If there were some folks who were
19 relocating from outside a certain area, then they would
20 be provided a certain amount of assistance in their
21 first month's rent. Those type things.

22 Q. And when did that first happen, to your
23 knowledge?

24 A. Probably would have been about the same
25 time, in April of '07.

1 Q. Since -- we discussed a minute ago what
2 happened in October of 2006 where there were groups of
3 employees who were interviewed because there were
4 concerns about their potentially being involved in
5 identity theft, correct?

6 A. Yes.

7 Q. Has that happened -- to your knowledge,
8 has that happened in Cactus or Greeley since October
9 2006?

10 A. No.

11 Q. Do you know why not?

12 A. No.

13 Q. Other than the subpoena for I-9 forms that
14 came to the Cactus facility sometime in 2006, are you
15 aware of any other subpoenas to either the Cactus or
16 Greeley facility since then?

17 A. From who?

18 Q. I guess from any governmental agency.

19 A. Oh. Yes.

20 Q. Tell me about that.

21 A. I think there's a lot of lawsuits that
22 were related to that that we received subpoenas from --
23 for.

24 Q. Putting aside civil lawsuits and focusing
25 more on a governmental entity like ICE or Homeland

1 Security or Justice Department, are you aware of any
2 subpoenas like those?

3 A. I don't remember any, no.

4 Q. Are you aware that Border Management
5 Services -- Border Management Services --

6 MR. YOULE: Strategies.

7 Q. Is it Strategies?

8 A. Strategies.

9 Q. Border Management Strategies does an
10 annual audit of the various plants?

11 A. Yes.

12 Q. And do you recall what their assessment of
13 the Cactus facility was for 2007?

14 A. No.

15 Q. Was it good marks, bad marks? Average?
16 Do you remember?

17 A. There's been a lot that's happened since
18 then. I don't remember.

19 Q. What about at Greeley?

20 A. In the last recently, it was good.

21 Q. And how were those audits -- how were
22 those results conveyed to you? Was it in writing?

23 A. Yes.

24 Q. And is it like a letter grade, or how is
25 it graded?

1 A. I don't know for sure.

2 Q. But you were happy with the Greeley
3 audit?

4 A. Yes.

5 Q. Were there ever any -- strike that.

6 Were you ever aware, when you were in
7 Cactus, of any coyotes who were assisting people to
8 come into the country illegally so that they could work
9 for Swift?

10 A. No.

11 Q. Were any employees at Cactus ever
12 investigated for working with coyotes in that regard?

13 A. No.

14 Q. Other than the employee -- the hourly
15 production employees who were arrested by ICE in
16 December 2006, in the time you were at the Cactus
17 facility, was anyone arrested for potential immigration
18 violations or identity theft?

19 A. Yeah, I believe there were. Yes.

20 Q. And who were those people?

21 A. I don't know.

22 Q. Were they management or were they
23 production employees?

24 A. Production employees.

25 Q. So that had occurred both before the raid

1 and after the raid?

2 A. I don't remember.

3 Q. Were you aware of any management level
4 employees at the Cactus facility ever being arrested
5 for potential immigration violations or identity
6 theft?

7 A. No.

8 Q. Are you aware of any investigation that
9 Swift has conducted of a man named Oscar Ariaga at the
10 Swift Cactus facility.

11 A. I'm aware of Oscar.

12 Q. Are you aware of any investigation of him
13 by Swift?

14 A. Nothing that -- no. I mean, nothing that
15 would show anything.

16 Q. What do you mean by nothing that would
17 show anything?

18 A. Oscar is an HR manager at that facility.
19 And there are a lot of people in town that didn't like
20 him for different reasons. And people alleged all
21 kinds of things about Oscar, but nothing ever had
22 substance.

23 Q. Is he still there?

24 A. Yes.

25 Q. And he's the HR manager?

1 A. Yes.

2 Q. And was he the HR manager under you when
3 you were the HR director?

4 A. Yes.

5 Q. Were the allegations made against
6 Mr. Ariaga investigated?

7 A. Yes.

8 Q. By who?

9 A. By me.

10 Q. Tell me some of the -- in general terms,
11 what were some of the allegations?

12 A. I don't remember exactly all of them.
13 There were issues about -- you know, that Oscar would
14 play favoritism toward people. There were allegations
15 that he would only hire -- approve for rehire his
16 friends or people that he knew or people that had done
17 him favors on other things.

18 Most of the allegations were brought to me
19 by Oscar himself. He had heard a rumor in the
20 community, and I would investigate it.

21 Q. Were there ever allegations that he was
22 involved in helping workers obtain fraudulent identity
23 documents?

24 A. I don't remember that.

25 Q. Were there ever any allegations that you

1 heard that he was involved in working with coyotes?

2 A. I don't remember that.

3 Q. And did anyone other than you ever
4 investigate the allegations that you described to me
5 about Mr. Ariaga?

6 A. Not that I'm aware of.

7 Q. Did you ever report any of the
8 allegations about Mr. Ariaga to any of your superiors
9 at Swift?

10 A. I believe that I discussed them with
11 Doug.

12 Q. Doug Schult?

13 A. Yeah.

14 Q. And what did you tell him and what did he
15 tell you?

16 A. What we had found and what we were doing.

17 Q. Did he approve?

18 MR. YOULE: Objection to form for lack of
19 foundation.

20 A. I don't know.

21 Q. He never told you to do anything different
22 than what you were doing?

23 A. No.

24 Q. And who is your HR manager now at the
25 Greeley facility?

1 A. It's a vacant position.

2 Q. Are you looking for a replacement?

3 A. Yes.

4 MR. PEARSON: Why don't you give me a
5 couple minutes to look over my notes.

6 MR. YOULE: Sure.

7 (Recess taken, 2:42 p.m. to 2:47 p.m.)

8 Q. (BY MR. PEARSON) You said that Mr. Ariaga
9 was not well liked by some people in the community?

10 A. Yes.

11 Q. Do you know why that is?

12 A. Probably because he fired them.

13 Q. Why? Was he responsible for firings

14 or --

15 A. He would handle most of the discipline
16 issues.

17 Q. Would those decisions typically be made by
18 you, though, and then carried out by him, or --

19 A. No.

20 Q. Who would make the decision?

21 A. He would.

22 Q. Have you ever been interviewed by ICE, the
23 Department of Homeland Security, the Justice
24 Department, or the FBI?

25 A. Yes.

1 Q. When was that?

2 A. I don't remember. It was in '07.

3 Q. And which agency was it?

4 A. I think there was an ICE -- there was an
5 ICE representative there, and maybe somebody from the
6 Department of Justice.

7 Q. Where did that occur?

8 A. In Amarillo.

9 Q. And what was the purpose of that?

10 MR. YOULE: Objection to form for lack of
11 foundation.

12 Q. You can answer if you can.

13 MR. YOULE: Were you told?

14 THE DEPONENT: Yes.

15 MR. YOULE: Okay. Go ahead.

16 A. It was related to a lawsuit that the UFCW
17 had filed against the United States government.

18 Q. (BY MR. PEARSON) What was that lawsuit
19 about?

20 A. That the -- my understanding is that the
21 UFCW was saying that the government's actions on the
22 day of the raid were inappropriate.

23 Q. And what kinds of questions were you
24 asked? What were the topics of the questions?

25 A. What happened that day.

1 Q. Any other time that you've been
2 interviewed by any of those agencies I mentioned?

3 A. Not that I remember.

4 Q. Other than the employees who were arrested
5 during the ICE raids of December 2006, are you aware of
6 any other employees at the Cactus facility that were
7 interviewed by ICE, DHS, the FBI, or the Justice
8 Department?

9 A. Yes.

10 Q. Who?

11 A. I don't know the names.

12 Q. What were they being interviewed about?

13 A. I believe it was in regards to the
14 employment eligibility status.

15 Q. And were those hourly workers?

16 A. Yes.

17 Q. And when did that occur?

18 A. It was in '07.

19 Q. And what happened to those employees?

20 A. They took them.

21 Q. How many was that? How many people?

22 A. I don't remember.

23 Q. Do you know when in '07 that was?

24 A. It would have been -- I don't remember
25 exactly. Late spring, early summer.

1 Q. Was it more than a handful of people, or
2 just a handful?

3 A. A handful.

4 Q. Were those all production workers?

5 A. As I remember, yes.

6 Q. Other than the -- and were those folks all
7 terminated by Swift?

8 A. I don't remember.

9 Q. Were you ever told by ICE what the status
10 was, the immigration status, of those people?

11 A. I don't know.

12 Q. Other than the employees at the Greeley
13 facility who were arrested in the December 2006 ICE
14 raids, were you aware of any other employees in Greeley
15 who have been interviewed by ICE, DHS, FBI, or Justice
16 Department?

17 A. Yes.

18 Q. Who were those?

19 A. I don't know their names.

20 Q. Were they also employees who were being
21 interviewed about their immigration status?

22 A. No. I don't know what they were being
23 interviewed about.

24 Q. When did that occur?

25 A. Since I've been in Greeley.

1 Q. Which has been since when?

2 A. Since July of '07.

3 Q. Were those production workers or
4 management or --

5 A. Yes, production workers.

6 Q. Were they arrested?

7 A. No.

8 Q. Were they terminated by Swift?

9 A. No.

10 Q. As the director of human resources for the
11 Greeley plant, wasn't it -- strike that.

12 Weren't you concerned about wanting to
13 know what the purpose of those interviews had been?

14 A. Yes.

15 Q. Did you ask the employees or ICE or anyone
16 else?

17 A. No. ICE wouldn't tell you necessarily.

18 Q. Did you ask the workers?

19 A. No.

20 Q. Why not?

21 A. I didn't see any need to.

22 Q. It didn't bother you that they had been
23 interviewed by ICE?

24 A. No.

25 Q. Was that something that occurred

1 regularly, or was that unusual?

2 A. Unusual.

3 Q. And are those particular workers still
4 there, to your knowledge?

5 A. I have no idea.

6 Q. Did you ask ICE why they would interview
7 those particular workers in Greeley?

8 A. Yes.

9 Q. What did they tell you?

10 A. They had warrants.

11 Q. That's all they told you?

12 A. Uh-huh.

13 Q. Anything else they told you?

14 A. No.

15 Q. I don't know if I just asked you this or
16 not, but were those folks arrested?

17 A. No.

18 Q. And has that occurred only once since
19 you've been in Greeley?

20 A. No.

21 Q. It's occurred more than once?

22 A. Yes.

23 Q. Approximately how many times?

24 A. Maybe two or three times.

25 Q. And on any of those occasions, did you

1 learn either from the employee or from ICE why those
2 people were being interviewed?

3 A. I don't remember, no.

4 Q. When was the most recent time that
5 happened?

6 A. I don't know.

7 Q. The last few months?

8 A. Probably. I've only been there a few
9 months, so it's not --

10 Q. Well, how long have you been at Greeley?
11 Since when?

12 A. Since July.

13 Q. Well, I mean, you know, when I say last
14 few months, January, February, March of '08.

15 A. I don't remember any during that time.

16 Q. Were any of those employees that you aware
17 of being interviewed by ICE at the Greeley facility
18 terminated because of information that was learned at
19 that time?

20 A. I don't remember.

21 Q. Both at Cactus and then in Greeley, when
22 you became aware that ICE was interviewing a particular
23 employee, did you then go and do any kind of an audit
24 or review of their paperwork?

25 A. Yeah.

1 Q. When?

2 A. I don't remember dates. I mean --

3 Q. No. But, I mean, was that each time that
4 would happen, you would do that? Or just on some
5 occasions?

6 A. There were a lot -- I mean, there were
7 occasions where law enforcement would come to speak to
8 an employee. It might be to serve a warrant, it might
9 not be. Every time we're not going to review that
10 employee's records.

11 Q. Why not?

12 A. Why would we? I didn't see any reason to.

13 Q. Well, on the occasions on which you did,
14 why did you?

15 A. If the employee was arrested or if we
16 were told that there was an issue with the identity
17 theft.

18 Q. On those occasions at Cactus and Greeley
19 on which you were aware that employees had been
20 interviewed by ICE, did you ever sit down and try to
21 interview those employees to see what they talked about
22 with ICE?

23 A. No.

24 Q. And why not?

25 A. Didn't see any need to.

1 MR. PEARSON: I'll pass the witness.

2 MR. YOULE: No questions.

3 WHEREUPON, the within proceedings were
4 concluded at the approximate hour of 2:57 p.m. on the
5 9th day of April, 2008.

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1 I, ERIC A. RAY, do hereby certify that I have
2 read the above and foregoing deposition and that the
3 same is a true and accurate transcription of my
4 testimony, except for attached amendments, if any.

5 Amendments attached () Yes () No
6
7

ERIC A. RAY

8
9
10 The signature above of ERIC A. RAY was
11 subscribed and sworn to before me in the county of
12 _____, state of Colorado, this _____ day
13 of _____, 2008.
14

15 _____
Notary Public

16 My commission expires:
17
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23 Blanca Valenzuela 4/9/08(sz)
24
25

1 REPORTER'S CERTIFICATE

2 STATE OF COLORADO)
) ss.

3 CITY AND COUNTY OF DENVER)

4 I, SHARON L. SZOTAK, Registered Professional
Reporter, Certified Realtime Reporter, and Notary
5 Public, State of Colorado, do hereby certify that
previous to the commencement of the examination, the
6 said ERIC A. RAY was duly sworn by me to testify to the
truth in relation to the matters in controversy between
7 the parties hereto; that the said deposition was taken
in machine shorthand by me at the time and place
8 aforesaid and was thereafter reduced to typewritten
form; that the foregoing is a true transcript of the
9 questions asked, testimony given, and proceedings had.

10 I further certify that I am not employed by,
related to, nor of counsel for any of the parties
11 herein, nor otherwise interested in the outcome of this
litigation.

12
IN WITNESS WHEREOF, I have affixed my
13 signature this 14th day of April, 2008.

14 My commission expires June 10, 2008.

15
16 X Reading and Signing was requested.
17 Reading and Signing was waived.
18 Reading and Signing is not required.